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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,331	02/23/2004	Lars Boerger	BD-001-US	8711
50530	7590	07/28/2009		
LUCY ELANDJIAN IP LAW SERVICES, LLC. 450 E. Waterside Drive, Suite 202 Chicago, IL 60601			EXAMINER AZPURU, CARLOS A	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 07/28/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Receipt is acknowledged of the amendment and response filed 05/11/2009.

The rejections under 35 USC 112, second paragraph and 35 USC 102(b) are withdrawn in view of applicant's amendment. However, those amendments have resulted in new rejections.

The following are new rejections of the claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-6, 9, 10, 13, 14, 17-22, 31 and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has amended the claims to read on a device which is "designed solely for drug delivery". There is no support in the original specification for this limitation and it is considered new matter. Correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 31-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 contains Markush Group formerly found in claim 1 and is indefinite for the same reasons set out in the previous action regarding that claim. Specifically, the Markush Group contains species which are coextensive. The previous rejection of claim 1 should be reviewed by applicant, but an example is that all the species from bioceramic to zinc polycarbonate are all bioglass or bioceramics. Polyglycolic acid (among others) is a polyester. The metes and bounds of the claim are therefore indefinite. Clarification and correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 9, 10, 21, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buscemi et al (US Patent No. 5,500,013).

Buscemi et al disclose a device for implanting into the vasculature comprising a biodegradable matrix, at least one drug, and the device having a ring-like structure capable of degrading (see Abstract; col. 12, lines 47-67; col. 13, lines 1-13; Figures 1 and 3). Specific biodegradable matrix materials are found at col. 4, line 55 and col. 6, lines 10-37. Buscemi et al disclose a plurality of fibers in annular alignment (see Fig. 1) Drugs disclosed for incorporation into the matrix are found at col. 12, lines 59-67; col. 13, lines 1-13. These include particle forms of the bioactive (microcapsules) at col. 10, lines 61-64, and additionally meet the limitation of a drug being incorporated into the particles. Anti-inflammatories are specifically recited at col. 13, lines 4 and 5. Mechanical expansion is disclosed at col. 5, lines 61-64. Gluing the device to the vessel wall is disclosed at col. 3, lines 1-4. Buscemi et al differs only in the fibers are attached to the device.

However, applicant's attachment at one end and the other portion freely floating in the bloodstream is appears to only be a configuration change without any unexpected and/or unusual results which would rebut prima facie obviousness. As such, those of ordinary skill would have found it within their skill to claim the instant device given the disclosure of Buscemi et al. The instant invention would have therefore been obvious to

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one of ordinary skill in the art at the time of invention given the disclosure of Buscemi et al.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carlos A. Azpuru/
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